MOTION FILED

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No. 06-38

In The
Supreme Court of the United States

DETROIT ENTERTAINMENT, L.L.C., d/b/a MOTORCITY CASINO, and MARLENE BROWN,

Petitioners,

v.

STELLA ROMANSKI,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF AND BRIEF OF AMICI CURIAE GREEKTOWN CASINO, L.L.C., MGM GRAND DETROIT, L.L.C. AND MICHIGAN CHAMBER OF COMMERCE IN SUPPORT OF PETITIONER SEEKING WRIT OF CERTIORARI

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MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF

Amici have requested the consent of all parties to file this brief and consent was withheld by the attorneys for Respondent Romanski. Amici submit that they have demonstrated sufficient interest in this matter and the ability to bring to this Court's attention the unique perspective of the overall business community in Michigan. Accordingly, Amici respectfully request that their Motion be granted and this Brief in Support be accepted for filing with this Honorable Court.

Respectfully submitted,

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STATEMENT OF INTEREST OF AMICI CURIAE AND IN SUPPORT OF PETITIONERS' APPLICATION FOR WRIT OF CERTIORARI

The issue presented by this case is whether a private security guard who possesses limited arrest authority, and purportedly arrests someone outside of those limits, *i.e.*, without probable cause, is a "state actor" potentially liable for constitutional injuries under 42 U.S.C. § 1983. The Sixth Circuit Court of Appeals has erroneously concluded that even absent evidence of any connection or relation to the State, private parties may be held constitutionally liable for their security guard's conduct on their private premises. This holding is directly contrary to several other Circuits, the Michigan Supreme Court (*City of Grand Rapids v. Impens*, 327 N.W.2d 278 (Mich. 1982)) and this Honorable Court's holding in *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982). The Sixth Circuit's flawed decision has extraordinary implications for Amici and, indeed, all business entities who employ or hire persons for security purposes. Various businesses have already withdrawn their PA 330 certification, and others are considering doing so in light of the Sixth Circuit's opinion, which necessarily places a significantly greater burden on local law enforcement. Amici strongly support the position of Petitioners herein and concur in their request for review by this Court.

Two of the Amici submitting this brief are casinos who, like petitioner, employ close to 3,000 people and average approximately 15,000 patrons daily. All three casinos employ security personnel to ensure the safety and orderly operation of their privately owned enterprises. The

question before this Court is of exceptional importance to Amici and the numerous private businesses throughout the State that utilize security personnel to protect their assets or the safety of their patrons.[1] Moreover, the Sixth Circuit's ruling is clearly not limited to casinos but to all businesses, including retail, grocery, hospitals and health clinics, malls, bars and restaurants, movie theaters, among others, who regularly employ (and need) security personnel, and are now subject to potential liability for constitutional violations if they choose to protect their private enterprises. Amici are extremely concerned that should the Sixth Circuit's decision be permitted to stand, every contact by their security guards with their patrons could be construed as "state action" and, thus, render them potentially liable for constitutional and punitive damages. The consequences of being deemed a state actor can be economically catastrophic; the punitive damages sanctioned by the Sixth Circuit here were 2150 times the actual compensatory damages. This is a clear attempt by Plaintiff and other interested parties to federalize state law torts in hope of qualifying for massive punitive damages, such as the case before this Court. Indeed, several other cases have already been filed and/or are pending asserting these very same claims (often by the same plaintiffs' attorneys). *See, e.g., Douglas Moore v. Detroit Entertainment, et al.,* Wayne County Circuit Court Case

[1] The third Amici submitting this brief is the Michigan Chamber of Commerce (the "Chamber"). The Chamber is a non-profit membership corporation that represents the interests and views of its over 7,000 members, who are Michigan private corporations and businesses engaged in civic, professional, commercial, industrial, agricultural and recreational enterprises, many of whom regularly employ security guards and are thus directly impacted by the Sixth Circuit's decision.

No. 04-424554-NO (2004) (Judge Callahan, believing he was bound by *Romanski*, instructed the jury that the casino was a state actor as a matter of law; jury awarded $525,000, $400,000 of which was punitive damages in case involving a patron who was detained for assaulting a security guard who had denied the patron entry to the casino because the security officer believed the patron was intoxicated).

It is preposterous, both legally and practically, that a private enterprise can be held liable as a state actor for a constitutional tort as a consequence of detaining someone who it believes engaged in theft or other criminal activity on its private premises. It makes even less sense to conclude that a private party who arrests someone without probable cause (and thus its conduct is obviously not sanctioned by the State) can be deemed a state actor. The Sixth Circuit nonetheless opines that simply because a security guard purportedly engages in conduct traditionally deemed a state function, which in this case includes even a limited arrest power, they are *ipso facto* state actors and liable for constitutional harm, regardless of the fact that the State never directed the security personnel to act, assets of the State were not at issue, and the Plaintiff even alleged there was no probable cause for an arrest, which is required under state law. Security guards in private businesses, particularly large ones, with the degree of daily traffic at issue here, must be allowed to have contact and communications with patrons on a regular basis throughout the day in order to do their job. The Sixth Circuit's decision could arguably "federalize" each and every one of these contacts. This opinion is not only nonsensical, it blatantly ignores the requirement set forth

by this Court in *Lugar, supra*, that the "state action" be *"fairly attributable to the state."* 457 U.S. at 937 (emphasis added). The Sixth Circuit's opinion ignored this prerequisite altogether in its analysis.

Per this ruling, therefore, a private entity must choose whether to risk substantial liability every time it detains or questions a person as a result of conduct observed at its private place of business or risk the consequences of having no security whatsoever. Congress could not possibly have intended to impose constitutional liability on private citizens under these circumstances. Moreover, the Michigan Legislature clearly enacted PA 330, the statutory provision under which the security guards here at issue were licensed, to encourage private security in an attempt to reduce the burdens on local law enforcement agencies, particularly in large metropolitan areas which are already over extended. Not one of the Detroit casinos currently maintains this certification because of the fear of potential liability and, thus, consequently the burden on city and state police departments has correspondingly been increased. This decision by the Sixth Circuit is thus both bad law and policy. Amici accordingly request that this Honorable Court grant Petitioners' Application for a *writ of certiorari* and reverse the Sixth Circuit Court of Appeals' erroneous decision.

Amici have requested the consent of all parties to file this brief and consent was withheld by the attorneys for Respondent Romanski. Amici submit that they have demonstrated sufficient interest in this matter and the ability to bring to this Court's attention the unique perspective of the overall business community in Michigan.

Accordingly, Amici respectfully request that their Motion be granted and this Brief in Support be accepted for filing with this Honorable Court.

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